2009

State of Utah v. James Benjamin White : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Appellant / Cross-Appellee, vs. JAMES BENJAMIN WHITE, Appellee / Cross-Appellant.	Case No. 20090279-CA Priority No. 2

BRIEF OF APPELLEE AND CROSS-APPELLANT

Appeal from an order dismissing one count of Criminal Nonsupport, a third degree felony, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Ann Boyden, Judge, presiding.

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JURISDICTIONAL STATEMENT

The State appeals an order dismissing with prejudice one count of Criminal Nonsupport, a third degree felony. Jurisdiction is conferred on this Court pursuant to Utah Code Annotated §§ 78A-4-103(2)(e) (2009 as amended).

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. Is the appeal or cross-appeal in this case jurisdictionally proper and did the State fail to preserve its issue on appeal? Questions of law are reviewed for correctness. *State v. Yazzie*, 2009 UT 14, 203 P.3d 984.

2. Did the trial court properly exercise its discretion and dismiss this almost nine-year old case in accordance with Rule 25, Utah R. Crim. P. 25, which allows a case to be dismissed "for substantial cause and in furtherance of justice." *Cf. State v. Killpack*, 191 P.3d 17 (Utah 2008) ("[U]nder an abuse of discretion standard, [we] will overturn a sentencing decision only if it is " ' clear that the actions of the [trial] judge were so

inherently unfair as to constitute an abuse of discretion.'"); *Uintah Basin Med. Ctr. v. Hardy*, 2008 UT 15, ¶ 9 ("A court's interpretation of its own order is reviewed for clear abuse of discretion and we afford the district court great deference.").

3. For analogous reasons, did the trial court appropriately dismiss this case due to speedy trial violations and the evidentiary difficulties attached to fifteen-year old factual allegations and an almost nine-year old prosecution filing? *See supra* Issue 2.

4. Did the trial court's ruling appropriately consider the language of the competency statute and, assuming, *arguendo,* error existed, did the State fail to meet its burden of showing that prejudicial error occurred?

> An erroneous decision by a trial court "cannot result in reversible error unless the error is harmful." Harmless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings. Put differently, an error is harmful only if the likelihood of a different outcome is sufficiently high that it undermines our confidence in the verdict. The burden of showing harmfulness normally rests with the complaining party.

State v. Robertson, 932 P.2d 1219, 1227 (Utah, 1997) (citations omitted); *id.* (citing *State v. Bishop*, 753 P.2d 439, 448 (Utah 1988) (holding that "appellant has the burden of establishing that reversible error resulted from an abuse of discretion").

PRESERVATION OF THE ARGUMENT

Mr. White disputes the State's argument that its issue was preserved. *See* Point II.

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

The texts of the following relevant statutory provisions and rules are contained in this brief or Addendum A.

Utah Code Ann. § 77-15-5

Utah Code Ann. § 77-15-6

Utah Code Ann. § 77-18a-1

Utah Code Ann. § 78A-4-103(2)(e)

Utah R. Civ. P. 59

Utah R. Crim. P. 25

STATEMENT OF THE CASE

In its opening brief, the State's "Statement of the Case" appears to list the pertinent dates or filings at the trial court level. Mr. White does not repeat them here, although the statement is supplemented or clarified below in his brief.

STATEMENT OF THE FACTS

Due to the long-standing nature of this almost nine-year old case, the trial court set forth in detail its reasons for finding Mr. White to be incompetent, albeit the incompetent determination was not disputed below nor on appeal. The court's two written rulings are attached in the Addenda, with relevant procedural facts noted in the Statement of the Case of the State's Opening Brief or below in the body of this brief. *See State of Utah v. James Benjamin White*, Case No. 011900818, "Ruling and Order," dated March 24, 2009 (a copy of which is attached as Addendum B); R 1033-49; *State of Utah v. James Benjamin White*, Case No. 011900818, "Ruling on State's Motion to Amend Judgment," dated

April 14, 2009 (a copy of which is attached as Addendum C).

SUMMARY OF THE ARGUMENT

The State's is not jurisdictionally barred from appealing the lower court's order of dismissal. However, Mr. White's *pro se* cross-appeal appears to be improper because there is no pending prosecution.

The State attempted to preserve its issue with a pleading entitled, "Motion to alter or amend judgment," although its reliance on and citation to Rule 59 is inapposite to the facts at hand. The State did not follow the requirements of the Rule and it essentially filed a motion to reconsider – a pleading not recognized under Utah rules or her authority.

Rule 25 allowed the lower court to dismiss a case involving fifteen year old factual allegations after it had presided over the matter for almost nine years and determined that Mr. White was incompetent to proceed. "In its discretion, for substantial cause, and in furtherance of justice," the court weighed the competing interests of the parties before ruling that the unreasonable delays would result in an unfair trial. Its order(s) may be affirmed on that basis.

For analogous reasons, Mr. White's constitutional right to a speedy trial was violated and, as noted by the court, he would suffer the prejudice of an unfair trial had his matter proceeded forward.

The State does not contest the lower court's finding of incompetence. Its challenge to the commitment procedure of Utah Code Ann. § 77-15-6(1) is subject to

whatever may have been provided pursuant to Utah Code Ann. § 77-15-5. Since the court's order(s) constitute an exception to the Section -(6)(1) commitment procedure, the statutory mandate would be inapplicable to this particular case.

Assuming, *arguendo*, a statutory requirement of placing the defendant in restorative treatment for 90 days was not followed, the error was harmless. The State has not shown the likelihood of a different outcome with such a placement, particularly since the trial court explained that its result would not be any different. It had presided over the matter for approximately eight or nine years and a further review, after an additional 90 days, would not have made a difference. Moreover, in its oral ruling and in both of its written rulings, the court repeated that it had reviewed and considered the entire commitment and competency statute. At its hearing, the court provided the parties with a copy of the statute for reference. Lack of prejudice is further evidenced by the State's ability to refile additional charges and to pursue civil commitment proceedings if it desires treatment for Mr. White. This Court should affirm the lower court rulings.

ARGUMENT

POINT I. APPELLATE JURISDICTION APPEARS TO EXIST FOR THE STATE, BUT NOT FOR THE DEFENDANT'S PRO SE APPEAL

Mr. White's *pro se* arguments in his cross-appeal appear to be jurisdictionally impermissible. Under the statute that governs appeals, a defendant has the right to appeal only a few limited orders – none of which apply to his situation. *See* Utah Code Ann. § 77-18a-1(1)(a) ("a final judgment of conviction"); -1(1)(b) ("an order made after judgment that affects the substantial rights of the defendant"); -1(1)(c) ("an order adjudicating the defendant's competency to proceed further in a pending prosecution"); -1(1)(d) ("an order denying bail"). In light of the lower court's order of dismissal, the prosecution is no longer pending and the defendant may not file a cross-appeal.

However, the State takes a different view in its brief, believing that the same language entitled it to appeal "an order adjudicating the defendant's competency to proceed further in a pending prosecution." State's Opening Brief, page 4 (citing Utah Code Ann. § 77-18a-1(3)(c)).[1] Less problematic than the "pending prosecution" language of Utah Code Ann. § 77-18a-1(1)(c) or -1(3)(c) would have been a statutory provision that simply allowed either party to appeal from "an order adjudicating the defendant's competency to proceed further." Since the "pending prosecution" words may not be deemed superfluous statutory language, the right to appeal does not exist (for either party)

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[1] Assuming, *arguendo*, this Court sides with the State in its reading of subsection -1(3)(c), Mr. White's *pro se* arguments are attached in Addendum D of this brief without editing or alteration.

if the case was dismissed. There is no pending prosecution.

Despite the absence of a right for the State to appeal under the "pending prosecution" clause of Utah Code Ann. § 77-18a-1(3)(c), a companion clause gave the State the ability to appeal from "a final judgment of dismissal." Utah Code Ann. § 77-18a-1(3)(a). On the one hand, because a specific provision governs over a general provision, the inability to appeal from "an order adjudicating the defendant's competency to proceed further in a pending prosecution" would trump the general allowance to appeal from "a final judgment of dismissal." On the other hand and to be consistent, if the "pending prosecution" clause is so specific as to be inapplicable, the right to appeal from "a final judgment of dismissal" must be conceded.

POINT II. THE STATE'S ARGUMENT WAS NOT PRESERVED

The State argues that "[t]his issue was preserved below in the State's motion to alter or amend judgment, R. 1055-70, 1123-28, and is therefore properly before this Court." Appellant's brief, page 1. Contrary to its argument, however, the State's cited authority, Utah R. Civ. P. 59(a)(6) and (7), is inapposite to the trial court's ruling because there was never a trial. R 1055. Further, this Court need not recognize the substance of the State's motion due to the nature of the unrecognized pleading.

At the trial level, "pursuant to Utah Rule of Civil Procedure 59(a)(6) and (7)[,] ... [the State asked] the court to open the judgment and direct entry of a new judgment when: there is insufficient evidence to justify the decision; or the decision is against the law; or

there is an error in law." *See State of Utah v. James Benjamin White*, Trial Case No. 011900818, "Motion to Alter or Amend Judgment," page 1 (filed April 2, 2009); R 1055. Claiming "[i]t is appropriate for the Court to utilize this civil procedure rule in an instance, such as this, where there is no applicable criminal statute or rule[,]" R 1068, the State improperly relied on an inapplicable rule of procedure for its motion.

Rule 59 is a post-trial rule of procedure that has nothing to do with Judge Boyden's pre-trial order of dismissal. The grounds for Rule 59 are inapposite here,[2] as are the context of the accompanying subsections of the Rule – all of which encompass post-trial issues like misconduct of the jury, newly discovered evidence, or excessive or inadequate damages. Indeed, the predicate for a Rule 59 motion are mandatory affidavits which were glaringly absent from the State's motion and buttress the misapplication of the Rule to this situation. Utah R. Civ. P. 59(c).

The State's attempt to rely on broad language such as an "error in law" or "it is against the law," Utah R. Civ. P. 59(a)(6) & (7), does not save the motion because of the lack of a trial below, the lack of affidavits in support of its motion, and the lack of plain

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[2] Subsection (a), entitled "Grounds," states:

> (a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

Utah R. Civ. P. 59(a).

language in support of its claims for the case at bar. In fact, the State's own motion does not even cite subsection (e), which is the specific Rule provision governing a "Motion to alter or amend a judgment." *Compare* R 1055 *with* Utah R. Civ. P. 59(e).

What the State appears to have filed is a motion to reconsider. Believing the trial court legally erred, R 1055; Utah R. Civ. P. 59(a)(6) & (7), the State tried to change the ruling with the filed motion notwithstanding the court's detailed sixteen page Ruling and Order. R 1033-1049. Motions to reconsider are more than disfavored, "they are not recognized by our rules" and the State's substantively similar "Motion to Alter or Amend Judgment," R 1055, should be similarly rejected by this Court.

Just as the rules do not recognize a motion to reconsider as a basis for tolling the time for an appeal, the State's deficient pleading here should not be recognized as a basis for preserving an issue on appeal. *Gillett v. Price*, 2006 UT 24, ¶ 7, 135 P.3d 861 (holding "regardless of the motion's substance, postjudgment motions to reconsider and other similarly titled motions will not toll the time for appeal because they are not recognized by our rules"); *Salt Lake County v. Metro W. Ready Mix, Inc.*, 2004 UT 23, ¶ 21, 89 P.3d 155 ("an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground"). As a reminder, had the State's "Motion to Alter or Amend" been used as the date for filing its notice of appeal, the entire pleading would not have been recognized regardless of its substantive content. *Gillett*, 2006 UT 24.

An appropriate course of action would have been for "the prosecutor [to inform] the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated." Utah Code Ann. § 77-15-6(5)(c).

POINT III. RULE 25 ALLOWS THE COURT, "IN ITS DISCRETION, FOR SUBSTANTIAL CAUSE AND IN FURTHERANCE OF JUSTICE," TO DISMISS THE INFORMATION

The State disagreed with the lower court's "Ruling and Order," dated March 24, 2009 (hereinafter "First Ruling"), and the court's subsequent "Ruling on State's Motion to Amend Judgment," dated April 14, 2009 (hereinafter "Second Ruling"), yet the State did not attach either ruling for appellate review, *Jolivet v. Cook*, 784 P.2d 1148, 1150 (Utah 1989) (citation omitted) ("If an appellant fails to provide an adequate record on appeal, this Court must assume the regularity of the proceedings below"), nor did it fully set forth the court's rationale, carefully considered and weighed under a totality of the circumstances analysis. The court's sixteen page and five page rulings did not ignore the lawful requirements. R 1033-49; 1123-28,

The First Ruling and Second Ruling of the trial court, both of which confirmed the dismissal of Mr. White's case without the need for trial, were consistent with the court's discretionary powers under Rule 25. *See* Utah R. Crim. P. 25(a) (entitled, "Dismissal without trial").

Under the Rule, "In its discretion, for substantial cause and in furtherance of

justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed." More specifically, "The court shall dismiss the information or indictment when ... [t]here is unreasonable or unconstitutional delay in bringing defendant to trial[.]" Utah R. Crim. P. 25(b)(1). Although not specifically cited, the court's order of dismissal was in accordance with the rule. Utah R. Crim. P. 25(c); *Salt Lake County v. Metro W. Ready Mix, Inc.*, 2004 UT 23, ¶ 21, 89 P.3d 155 ("an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground").

As discussed by the court, the order dismissing the case was not a rash or impetuous decision. A small excerpt from the court's First Ruling is summarized below, albeit a more complete reading of the attached written order provides greater context and an explanation of the circumstances at hand:

> The defendant is beyond litigious or obstreperous. The evidence outlined in this ruling far exceeds the standard of preponderance.
>
> Defendant is absolutely incompetent to proceed to trial on the criminal non-support charge, dated 1994-2000.
>
> Upon an adjudication that a defendant is not competent to proceed, § 77-15-6, Utah Code Ann., directs the procedure to restore competency. It addresses cases where medication and treatment at the State Hospital are likely to be beneficial.
>
> It specifically states that defendants charged with Aggravated Murder, Murder, Attempted Murder, Manslaughter and other first degree felonies should have priority to these resources.

> Certainly the State has a real interest in prosecuting criminal non-support cases. But as a third degree felony property charge, it carries less weight.
>
> There is no indication in this case that defendant would cooperate with treatment outside the State Hospital, that treatment would be beneficial, or that restoration to competency is likely. There is no reason to think any restoration could occur in a reasonable period of time.
>
> The controlling statute is clear that defendant's non-compliance is not a basis for dismissal. But my responsibility as Judge requires I weigh all applicable factors.
>
> The allegations in this case are nine to fifteen years old. The evidence is sufficiently stale that neither party is likely to get a fair trial. The minor children are approaching majority. There is no likelihood that restitution ever would be paid, even if defendant were tried and convicted.
>
> There simply are not sufficient interests to justify expending any more resources on this case or allowing it to proceed any further.

First Ruling, pages 14-15; R 1111-12 (attached as AddendumB); *see also* R 1142 (the court's written First Ruling was based on its oral ruling, announced March 23, 2009).

In response to the State's Motion to Alter or Amend Judgment, the court's Second Ruling further expounded upon its reasoning and included the lack of prejudice to the State and the government's ability to refile additional charges.

> The State argues that upon my adjudication that defendant was not competent to proceed, I ignored the Utah Code Ann., § 77-15-6, requirement to commit the defendant to the custody of the executive director of the Department of Human Resources for treatment intended to restore his competency. The State feels that because I did not have the benefit of these additional evaluations, my ruling was premature and without sufficient basis.

Neither is correct. As outlined in detail in both my oral and written decisions from the March 23, 2009 hearing, this Court considered years of observations and volumes of evidence before reaching the competency adjudication. The State does not contest that determination.

Upon that adjudication, I did not blindly or routinely proceed to the initial next-step of committing defendant to the Department of Human Resources, without any more consideration. Instead, I exercised my proper judicial role and considered the entire restorative process described in § 77-15-6. I weighed the judicious expenditure of those extensive resources against the totality of the circumstances in the pending case. Those circumstances include the factor that the allegations in this case are 15 years old, with the attendant evidentiary issues.

If I had made the commitment requested by the State, the evidence is abundant that the defendant would not have complied with my order to cooperate with the director of Human Resources any more than he has complied with any of my previous orders.

Defendant's previous conduct and statements indicate the most compulsive services; including police power, incarceration, State hospital commitment and involuntary medication, would likely be required to obtain defendant's cooperation in an attempt to restore competency. Even, if for the sake of argument, defendant were to freely cooperate and be fully restored to competency within the initial six-month treatment phase; I had already ruled that the reasonable time frame for this old case to be fairly tried, is already past. The State does not indicate who would bear the cost of the full process they demand. But it is proper for the Court to determine the appropriateness of this use of resources.

I rendered the Judgment the State seeks to amend only AFTER weighing all the factors clearly outlined in my ruling. I considered them along with defendant's extensive history of noncompliance and the evidentiary issues raised by the age of the case. ONLY THEN did I determine that the likelihood of the State obtaining the remedy they seek on the pending allegations did not warrant the expenditure of all the resources outlines in § 77-15-6. Therefore I dismissed the pending allegations ONLY.

> ... [My ruling] does not preclude the State from screening and appropriately pursuing more recent charges.
>
> ...
>
> In fact, my ruling affords the State an opportunity to pursue more recent charges, if appropriate, with fresher evidence, more accessible records, more readily available witnesses, and negates the possibility of reversal on defendant's 180-day Detainer Motion from 2001.

Second Ruling, pages 2-4 (a copy of which is attached in Addendum C); R 1124-26 (emphasis in original).

The court's First and Second Ruling supported its exercise of discretion and allowed a dismissal without trial. *See* Utah R. Crim. P. 25. The order of dismissal was pursuant to "substantial cause and in furtherance of justice[.]" Utah R. Crim. P. 25(a). This Court may affirm the lower court ruling on that basis.

Indeed, consistent with Rule 25's mandate to "dismiss the information or indictment when ... [t]here is unreasonable or unconstitutional delay in bringing defendant to trial[,]" Utah R. Crim. P. 25(b)(1), is a dismissal based on a speedy trial violation. U.S. Const. amend VI. A separate but related analysis follows.

POINT IV. MR. WHITE'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL WAS VIOLATED

Because there has been an unconstitutional delay of almost eight years before Mr. White was determined incompetent to stand trial, this case should be dismissed with prejudice. Under Utah law, an "[u]nconstitutional delay occurs when a defendant's fundamental right to a speedy trial has been violated." *State v. Cornejo*, 2006 UT App

215, ¶ 25, 138 P.3d 97. In order to determine whether a defendant's Sixth Amendment right to a speedy trial has been violated, the U.S. Supreme Court has enumerated four relevant factors to consider. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Specifically, these factors are "(1) the '[l]ength of delay,' (2) 'the reason for the delay.' (3) 'the defendant's assertion of his right [to a speedy trial],' and (4) the 'prejudice to the defendant.'" *Cornjo*, 2006 UT App 215 at ¶ 26 (*quoting Barker*, 407 U.S. at 530). However, none of these factors is "a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *Barker*, 407 U.S. at 533.

An analysis of these factors and the circumstances of this case indicate that Mr. White's constitutional right to a speedy trial has been violated, and therefore this Court should affirm the trial court's dismissal. Further, in light of the lower court's order of dismissal and its reference to the prejudicial delays, the State on appeal should be saddled with the burden of establishing that these factors do *not* apply.

A. The Length of Delay in This Case is Presumptively Prejudicial and Sufficient to Trigger a Speedy Trial Analysis Because It is Not Justified by the Complexity or Seriousness of the Case.

Because the length of the delay is not justified by the complexity or seriousness of the case, it is presumptively prejudicial and therefore sufficient to trigger a speedy trial analysis. As this Court explained in *Cornejo*, "a determination of what constitutes a

'presumptively prejudicial' delay 'is necessarily dependent upon the peculiar circumstances of the case.' For example, for 'serious, [more] complex' crimes, a greater period of delay will be tolerated." 2006 UT App 215 at ¶27 (*quoting Barker*, 407 U.S. at 530-31); *see also State v. Stilling*, 770 P.2d 137, 142 (Utah 1989) (noting that "the length of delay that can be tolerated is proportional to the complexity of the case.").

For instance, in *State v. Woodland*, 945 P.2d 665, 670 (Utah 1997), the Utah Supreme Court considered a delay of three years and one month in the prosecution of first and third degree felonies to be substantial "enough to trigger a threshold speedy trial inquiry," noting that this amount of time was "potentially, but not necessarily, prejudicial" without a consideration of the other relevant factors. Additionally, in *State v. Snyder*, 932 P.2d 120, 130 (Utah Ct. App. 1997), a delay of one year and eight months in the prosecution of a class A misdemeanor was sufficient enough to trigger a speedy trial analysis.

Here, the delay of almost eight years in the prosecution of a third degree felony criminal non-support charge is certainly lengthy enough for a speedy trial analysis. Moreover, neither the complexity nor the seriousness of the charges in this case justifies such a delay. Accordingly, the length of the delay "is sufficient to raise legitimate questions regarding [Mr. White's] right to a speedy disposition" of his case and warrants a consideration of the *Barker* factors. *State v. Banks*, 720 P.2d 1380, 1385-86 (Utah 1986).

B. Mr. White Has Not Waived His Right to a Speedy Trial Because He Has Requested and Demanded a Speedy Trial on Numerous Occasions Throughout the Criminal Proceeding.

Although *Barker* requires the court to consider whether the defendant asserted his right to a speedy trial, the Supreme Court "made it clear that a defendant cannot waive his right to a speedy trial by failing to demand it." *State v. Ossana*, 739 P.2d 628, 631 (Utah 1987); *see also Barker*, 407 U.S. at 528. Instead, the Court explained that "the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right... [This] allows the trial court to exercise a judicial discretion based on the circumstances." *Barker*, 407 U.S. at 528-29.

The record in this case is replete with demands and requests made by Mr. White for a speedy trial. R. 17-18, 29-35, 70-74, 116-117, 132-133, 152-154, 201-207, 332, 346-355, 607-651, 1126. Thus, the third *Barker* factor is undoubtedly satisfied.

C. Mr. White Will Suffer Prejudice in This Case Because the Delay of Nearly Eight Years Awaiting a Jury Trial Will Impede the Preparation of an Adequate Defense

Barker requires a consideration of any prejudice suffered by the defendant as a result of the delay, which the Supreme Court explained "should be assessed in light of the interests of defendants which the speedy trial right was designed to protect." *Barker*, 407 U.S. at 532. Specifically, the right to a speedy trial was intended "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and

(iii) *to limit the possibility that the defense will be impaired.*" *Id.* (emphasis added).

The first of these factors is inapplicable in this case because Mr. White is not presently incarcerated. However, as the Court noted in *Barker*, "even if an accused in not incarcerated prior to trial, he is still disadvantaged by the restraints on his liberty and by living under a cloud of anxiety." *Id.* at 533.

More significantly, however, Mr. White will suffer prejudice from the delay in this case because of the likelihood that his defense will be impaired as result. In cases involving significant delay, "prejudice may fairly be presumed simply because everyone knows that memories fade, evidence is lost, and the burden of anxiety upon any criminal defendant increases with the passing months and years." *U.S. v. Mann*, 291 F.Supp. 268, 271 (S.D.N.Y. 1968) (cited with approval in *Barker*, 407 U.S. at 532).

Notably, however, the Supreme Court has made clear that "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Doggett*, 505 U.S. at 655. In fact, the Court specifically "recognized that impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" *Id.* (*quoting Barker*, 407 U.S. at 532). For that reason, "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Id.* Additionally, the importance of such presumptive prejudice "increases with the length of delay." *Id.* at 656.

Accordingly, Mr. White need not demonstrate affirmative proof of particularized prejudice in order to prevail on his speedy trial claim; rather, as the trial court noted, prejudice may fairly be presumed in this case because of the likelihood that Mr. White's defense will be impaired as a result of a delay of nearly eight years awaiting trial. Thus, even if Mr. White's competency was a non-issue, his ability to present an adequate defense at an eventual jury trial was severely compromised by the delays. R 1047 (the lower court explained, "[t]he allegations in this case are nine to fifteen years told [and the] evidence is sufficiently stale that neither party is likely to get a fair trial"). Even in a best case scenario of Mr. White attaining competency in the immediate future, the unfairness of a trial proceeding continues to be hindered by the passage of time. In sum, dismissal of the charge is appropriate based on a violation of Mr. White's right to a speedy trial.

POINT V. THE TRIAL COURT APPROPRIATELY REVIEWED AND CONSIDERED THE STATUTORY REQUIREMENTS

"[T]he State has chosen to not appeal from the court's determination that Defendant is incompetent." State's Opening Brief, page 5. In its appeal of the court's order dismissing the case, the State contends as follows:

> Utah Code Annotated § 77-15-6(1) (West 2004) requires the trial court to give the Department of Human Services an opportunity to restore the defendant to competency prior to taking any action with respect to the charges:
>
> > Except as provided in Subsection (5), if after hearing, the person is found to be incompetent to stand trial, the court **shall** order the defendant committed

> to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency.

State's Opening Brief, page 6 (citing Utah Code Annotated § 77-15-6(1)) (emphasis added by the State).

The State's cited statutory quote is incomplete, however, as it omitted a key sentence. After the sentence ending with "to restore the defendant to competency[,]" the very next sentence reads, "The court may recommend but not order placement of the defendant." Utah Code Ann. § 77-15-6(1). In other words, "[t]he court may ... not order placement of the defendant." *Id.* If there is *not* court ordered placement, the DHS director or designee need not designate specific placement of the defendant:

> (1) Except as provided in Subsection (5), if after hearing, the person is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency. **The court may** recommend but **not order placement of the defendant**. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or his designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

Utah Code Ann. § 77-15-6(1) (emphasis added).

The first clause of the above indented paragraph, "Except as provided in Subsection (5)," also merits attention as the clause provides an exception to the general rule. The State's claimed mandatory requirement of Utah Code Ann. § 77-15-6(1) is

subject to whatever may have been provided pursuant to Utah Code Ann. § 77-15-5.

Significantly, Utah Code Ann. § 77-15-5 allowed the court to "make any reasonable order to insure compliance with this section." Utah Code Ann. § 77-15-5(14). The court here made such an order. The State did not then, nor does it now, contend that the court's order and finding of Mr. White's incompetence was unreasonable or insufficient under the preponderance of evidence standard. Nor did the State attempt substantively to counter the trial court's belief that there were insufficient interests justifying further prosecution or that DHS efforts would ultimately be unsuccessful. *See* State's Opening Brief, page 8. For each basis, the court's order was not attacked as substantively unreasonable. Rather, the State's issue was a claimed procedural mistake of not allowing a 90 day restorative effort for a case that had been pending for nine years. Regardless of the State's focus, the court's reasonable order under Utah Code Ann. § 77-15-5(14) negated any requirement under Utah Code Ann. § 77-15-6(1).

POINT VI. IF THE COURT ERRED BY NOT FOLLOWING THE STATUTE, THE ERROR WAS HARMLESS

In other competency proceedings, the issue of procedural punctuality or statutory noncompliance has surfaced before. For example, in *State v. Robertson*, 932 P.2d 1219 (Utah, 1997), the defendant procedurally challenged the trial court's decision to hold a hearing too early and for not formally staying the proceedings in accordance with the mandatory language of the statute. Although the opinion found error, such a procedural error and lack of statutory compliance was deemed harmless:

> However, having determined that error was committed, we must address its harmfulness. An erroneous decision by a trial court "cannot result in reversible error unless the error is harmful." Harmless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings. Put differently, an error is harmful only if the likelihood of a different outcome is sufficiently high that it undermines our confidence in the verdict. The burden of showing harmfulness normally rests with the complaining party.

State v. Robertson, 932 P.2d 1219, 1227 (Utah 1997) (citations omitted); *id.* (citing *State v. Bishop*, 753 P.2d 439, 448 (Utah 1988) (holding that "appellant has the burden of establishing that reversible error resulted from an abuse of discretion").

The State has not met its burden of showing harmfulness. Assuming, *arguendo*, that competency treatment for 90 days was required, the State has not established why such an error was not sufficiently inconsequential in this particular case. Especially in light of the forcefulness of the lower court's rulings, the State has not shown the likelihood of a different outcome had such a 90 day period taken place. R 1047 (the court found that after almost nine years of experience with White and "years of observation and volumes of evidence," there was "no indication ... treatment would be beneficial, or that restoration to competency is likely").

In fact, the court expressly stated that it did not "blindly" fail to consider the commitment process. "Instead, I exercised my proper judicial role and considered the entire restorative process described in § 77-15-6." Second Ruling, page 2 (emphasis in original); R 1124. Its rulings were reasonable, statutorily cognizant, and not prejudicial.

Even if there had been a 90 day statutory treatment period, a different outcome was

not likely then or now for a court with such a long-standing familiarity of the competency issues surrounding Mr. White. Given the 15 year old nature of some of the allegations in the case, R 1125, and the "eight-plus years this case has pended," R 1101, the trial court already prospectively ruled that the 90 day treatment period would not have prompted a different result:

> I rendered the Judgment the State seeks to amend only AFTER weighing all the factors clearly outlined in my ruling. I considered them along with defendant's extensive history of noncompliance and the evidentiary issues raised by the age of the case. ONLY THEN did I determine that the likelihood of the State obtaining the remedy they seek on the pending allegations did not warrant the expenditure of all the resources outlines in § 77-15-6. Therefore I dismissed the pending allegations ONLY.
>
> ... [My ruling] does not preclude the State from screening and appropriately pursuing more recent charges.
>
> ...
>
> In fact, my ruling affords the State an opportunity to pursue more recent charges, if appropriate, with fresher evidence, more accessible records, more readily available witnesses, and negates the possibility of reversal on defendant's 180-day Detainer Motion from 2001.

Second Ruling, pages 2-4 (emphasis in original); R 1124-26. Indeed, if this Court remands the case with an order allowing the 90 day restorative process, the State has not shown that "the likelihood of a different outcome is sufficiently high that it undermines our confidence" in Judge Boyden's First and Second Rulings. At best, this Court could order a 90 day restorative process and if Judge Boyden's rulings still remained the same, nothing statutorily would be different then than it is now except for the 90 day lapse of time. Following such a 90 day process and the status quo of an incompetency

determination, the State's recourse (both now and then) would be civil commitment proceedings. Utah Code Ann. § 77-15-6(5)(c). Such a situation does not constitute prejudicial error. *Cf.* State's Opening Brief, page 9 (the State's references to a one year or eighteen month evaluation process are inapplicable to the court's 77-15-6(5)(c) determination).

Again, since "the State has chosen to not appeal from the court's determination that Defendant is incompetent[,]" State's Opening Brief, page 5, if the State's focus is on treating or committing Mr. White, alternative means are available for such a course of action. Utah Code Ann. § 77-15-6(5)(c) ("If the court enters a finding pursuant to Subsection (4)(c) ['incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future'], the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated").

The State is not precluded from filing more recent criminal non-support charges "with fresher evidence, more accessible records, [and] more readily available witnesses[.]" Second Ruling, page 4; R 1126. Even assuming, *arguendo,* error occurred, the narrowness of the court's rulings and the State's decision to not appeal the finding of incompetency would not change the outcome.

POSITION ON ORAL ARGUMENT

Oral argument is not requested.

CONCLUSION

It is respectfully requested that the Court affirm the trial court's order of dismissal. The court's First and Second Ruling should be affirmed for any or all of the above-stated reasons.

SUBMITTED this 15th day of March, 2010.

Ronald S. Fujino
Attorney for Mr. White

CERTIFICATE OF DELIVERY

I hereby certify that I have caused the original and seven copies of the foregoing to be hand-delivered to the Utah Court of Appeals, 450 South State, 5th Floor, P. O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P. O. Box 140854, Salt Lake City, Utah 84114-0854, this 15th day of March, 2010.

ADDENDUM A

Statutes, Rules, and Constitutional Provisions

Utah Code Ann. § 77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.

(1) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition. The district court in which the petition is filed shall pass upon the sufficiency of the allegations of incompetency. If a petition is opposed by either party, the court shall, prior to granting or denying the petition, hold a limited hearing solely for the purpose of determining the sufficiency of the petition. If the court finds that the allegations of incompetency raise a bona fide doubt as to the defendant's competency to stand trial, it shall enter an order for a hearing on the mental condition of the person who is the subject of the petition.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

(i) comprehend and appreciate the charges or allegations against him;

(ii) disclose to counsel pertinent facts, events, and states of mind;

(iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against him;

(iv) engage in reasoned choice of legal strategies and options;

(v) understand the adversary nature of the proceedings against him;

(vi) manifest appropriate courtroom behavior; and

(vii) testify relevantly, if applicable;

(b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;

(c) if psychoactive medication is currently being administered:

(i) whether the medication is necessary to maintain the defendant's competency; and

(ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings.

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

(a) which of the above factors contributes to the defendant's incompetency;

(b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;

(c) the treatment or treatments appropriate and available; and

(d) the defendant's capacity to give informed consent to treatment to restore competency.

(6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete

the examination and provide the report.

(7) Any written report submitted by the experts shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon such statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9) When the report is received the court shall set a date for a mental hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause. Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing. An adjudication of incompetency to proceed shall not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(11) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b) of this section. The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing his progress

toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(12) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (11), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or his designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination. The executive director of the Department of Human Services or his designee may refuse to accept a defendant as a patient unless he is accompanied by a transportation and commitment order which is accompanied by the reports.

(13) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing his progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

(a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;

(b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and

(c) information concerning the defendant's known criminal history.

(14) The court may make any reasonable order to insure compliance with this section.

(15) Failure to comply with this section shall not result in the dismissal of criminal charges.

Utah Code Ann. § 77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) Except as provided in Subsection (5), if after hearing, the person is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency. The court may recommend but not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or his designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

(2) The examiner or examiners designated by the executive director to assess the defendant's progress toward competency may not be involved in the routine treatment of the defendant. The examiner or examiners shall provide a full report to the court and prosecuting and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner shall have up to an additional 90 days to provide the full report. The full report shall assess:

(a) the facility's or program's capacity to provide appropriate treatment for the defendant;

(b) the nature of treatments provided to the defendant;

(c) what progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(d) the defendant's current level of mental disorder or mental retardation and need for treatment, if any; and

(e) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party or by the executive director may appoint additional mental health examiners to examine the defendant and advise the court on his current mental status and progress toward competency restoration.

(4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed with the trial or such other procedures as may be necessary to adjudicate the charges.

(b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency.

(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days prior to any release of the committed person.

(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the court shall hold a hearing one year following the recommitment.

(7) At the hearing held pursuant to Subsection (6), except for defendants charged with the crimes listed in Subsection (8), a defendant who has not been restored to competency shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may order the defendant recommitted for a period not to exceed 18 months for the purpose of treatment to restore the defendant to competency with a mandatory review hearing at the end of the 18-month period.

(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(10) If the defendant has been charged with aggravated murder or murder and the court determines that he is making reasonable progress towards restoration of competency at the time of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant recommitted for a period not to exceed 36 months for the purpose of treatment to restore him to competency.

(11) If the defendant is recommitted to the department pursuant to Subsection (10), the court shall hold a hearing no later than at 18-month intervals following the recommitment for the purpose of determining the defendant's competency status.

(12) A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(13) In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if he were convicted of the charged offense. This Subsection (13) does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

(14) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.

(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

(16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), (12), or (13) shall not be dismissal of the criminal charges.

(17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(18) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital or other facility or the executive director of the Department of Human Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

(19) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Utah Code Ann. § 77-18a-1. Appeals -- When proper.

(1) A defendant may, as a matter of right, appeal from:

(a) a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail, as provided in Subsection 77-20-1(7).

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;

(b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;

(c) an order granting a motion to withdraw a plea of guilty or no contest;

(d) an order arresting judgment or granting a motion for merger;

(e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(f) an order granting a new trial;

(g) an order holding a statute or any part of it invalid;

(h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;

(i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;

(j) an order reducing the degree of offense pursuant to Section 76-3-402; or

(k) an illegal sentence.

(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Utah Code Ann. § 78A-4-103(2)(e). Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

Utah R. Civ. P. 59. New trials; amendments of judgment.

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(a)(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors.

(a)(3) Accident or surprise, which ordinary prudence could not have guarded against.

(a)(4) Newly discovered evidence, material for the party making the application, which he

could not, with reasonable diligence, have discovered and produced at the trial.

(a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

(b) Time for motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Affidavits; time for filing. When the application for a new trial is made under Subdivision (a)(1), (2), (3), or (4), it shall be supported by affidavit. Whenever a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits. The time within which the affidavits or opposing affidavits shall be served may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Utah R. Crim. P. 25. Dismissal without trial.

(a) In its discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed.

(b) The court shall dismiss the information or indictment when:

(1) There is unreasonable or unconstitutional delay in bringing defendant to trial;

(2) The allegations of the information or indictment, together with any bill of particulars furnished in support thereof, do not constitute the offense intended to be charged in the pleading so filed;

(3) It appears that there was a substantial and prejudicial defect in the impaneling or in the proceedings relating to the grand jury;

(4) The court is without jurisdiction; or

(5) The prosecution is barred by the statute of limitations.

(c) The reasons for any such dismissal shall be set forth in an order and entered in the minutes.

(d) If the dismissal is based upon the grounds that there was unreasonable delay, or the court is without jurisdiction, or the offense was not properly alleged in the information or indictment, or there was a defect in the impaneling or of the proceedings relating to the grand jury, further prosecution for the offense shall not be barred and the court may make such orders with respect to the custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise the defendant shall be discharged and bail exonerated.

An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or based upon the statute of limitations, shall be a bar to any other prosecution for the offense charged.

(e) In misdemeanor cases, upon motion of the prosecutor, the court may dismiss the case if it is compromised by the defendant and the injured party. The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth therein and entered in the minutes. The order shall be a bar to another prosecution for the same offense; provided however, that dismissal by compromise shall not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with an intent to commit a felony.

ADDENDUM B

"Ruling and Order," dated March 24, 2009

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	RULING AND ORDER
Plaintiff,	:	CASE NO. 011900818
vs.	:	
JAMES BENJAMIN WHITE,	:	Judge Ann Boyden
Defendant.	:	

Title 77, Chapter 15 of the Utah Code clearly provides that no person who is incompetent to proceed shall be tried for a public offense.

It is an important and humane part of our law that recognizes it is not right to prosecute someone for a crime, if that person does not understand what is occurring throughout the entire procedure.

It is vital that everyone involved in this hearing understand that a competency adjudication is a judicial determination.

It differs from other judicial rulings in that it involves consideration of mental health evaluations and clinical opinions. But it is not a clinical diagnosis. In many cases, the mental health examiners' opinions differ from each other, as well as from the ultimate determination of the judge. Any expert evaluation and opinion is an important factor to be carefully considered, but it is not determinative.

It is the judge's non-delegable duty to look at all the relevant evidence before her; including the case history, competency evaluations,

observations of the defendant, written and oral communications from the defendant, and other people's interactions with the defendant. In an inquiry into competency, the defendant is presumed to be competent unless a preponderance of the evidence shows him to be incompetent.

Utah Code Ann., § 77-15-5, outlines the required process for obtaining competency examinations. It provides that the defendant shall be examined by at least two mental health experts not involved with defendant's current treatment. The evaluators' reports must address the specific factors listed in § 77-15-5(4).

As is my practice, I have asked each attorney in this case to select a qualified evaluator to examine the defendant's competency.

Plaintiff's counsel selected Dr. Mark Rindflesh and defendant's counsel selected Dr. Golding.

The statute requires both the State and defendant cooperate in the process. Both attorneys have fully cooperated. Defendant has only hesitantly and partially cooperated here.

Defendant claims to have submitted to an evaluation by Will Haghasi, Ph.D. I have received no reports at all from this therapist and he is specifically excluded from conducting a competency evaluation because he is involved with defendant's therapy.

Defendant did not initially submit to an evaluation with Dr. Rindflesh. He first sought to have me recused for ordering the

evaluation, and sought an opinion from the appellate courts as to whether he was required to comply with my Order to have the evaluations.

But, as Dr. Rindflesh describes it, he did present -- "as a somewhat defensive man," "offended that the competency evaluation was requested," and "no doubt presenting information with his own bias," --but he presented for a single interview, February 19, 2009, and the evaluation was completed. I have studied this report at length.

I have received nothing from Dr. Golding. It is my understanding the defendant did not submit to that evaluation, as required.

Dr. Rindflesh opines that the defendant meets the clinical standard for competency. He lists no Axis I diagnosis, but does list Axis II diagnosis of Personality Disorder, Nos, with aspects of narcissistic and paranoid personality disorders.

Looking at all the evidence before me as a whole, I find that the evidence of (1) defendant's disjointed thought processes; (2) his distorted perceptions of both the judicial system and reality in general; (3) his paranoid personality disorder; and (4) his narcissistic behavior is abundant.

It is sufficient to meet the legal standard that defendant's mental and thinking disorders significantly impede his ability to proceed to trial.

Defendant's mental disabilities result in his inability to factually or rationally understand proceedings against him.

On January 18, 2001, the State Attorney General's Office filed a third degree felony, criminal non-support charge against defendant, charging that from July 1994 through 2000, defendant failed to provide support for his two minor daughters. A $10,000 bail was set based on the probable cause statement.

On February 20, 2001, the Legal Defenders Office was appointed to represent defendant. The defendant was in Colorado, but filed the first, of what would become many, *pro se* documents while represented by attorneys of record.

On July 7, 2001, the defendant was present in Utah and immediately ordered released to Pretrial Supervised Release pending trial.

On August 16, 2001, a preliminary hearing was heard by Judge Maughan, with John O'Connell, Jr., representing him. Judge Maughan found probable cause to bind over defendant to this Court, as charged.

In the eight-plus years this case has pended, defendant has filed hundreds of pages of rambling, *pro se* filings, and made numerous objections in and out of court. Never, in <u>any</u> of these communications, has the defendant ever addressed the legal issues charged; that is, whether <u>he</u> provided <u>support</u> to his <u>children</u>.

In 2002, defendant was an inmate in a Colorado prison for an independent Sex Assault on a Child felony. *Pro se*, he moved to have this pending case dismissed.

I denied defendant's 180-day detainer Motion for failure to meet either the substantive or procedural requirements of the Interstate Agreement on Detainer statutes.

(I note here, simply because defendant has so frequently raised it, that at the same time, the defendant filed a *pro se* Motion to Dismiss for speedy trial issues with Judge Barrett. This involved a separate case with a different prosecuting agency, the Salt Lake District Attorney's Office. At the hearing on this Motion, defendant was represented by David Brown. Contrary to what defendant repeatedly claims, even most recently to Dr. Rindflesh, the Court did not dismiss this case because of the defendant's actions or his attorney's. The Court did not find defendant not guilty of the charge(s). The Court even attributed some delay to the defendant. But Judge Barrett <u>did</u> grant defendant's Motion to Dismiss the case because the <u>State</u> had failed to actively prosecute the case.)

Defendant never has understood how I could deny what he perceived as the same Motion that another Judge granted.)

Defendant appealed my ruling. That appeal was dismissed, because my ruling was not a final Judgment on the case.

At that point, <u>both</u> this Court and several defense attorneys advised defendant that he needed to <u>proceed</u> on to trial, so that he could get that requisite final Judgment. Then, if convicted, he could test the

correctness of my 180-day detainer ruling in the appropriate appellate court.

Rather than follow that legal and rational procedure, defendant insisted on remaking the same Motion on the same argument in multiple jurisdictions.

Meanwhile, defendant refuses to address the underlying criminal non-support charge that still pends. He makes virulent accusations that his ex-wife lies about her income; her boyfriend/husband makes more money than he does; they all live in a bigger house; and church and government agencies adequately provide for his children.

These claims from the defendant are the very ones Dr. Rindflesh uses to determine the defendant has an understanding of the charges against him. In fact, they are legally irrelevant and illustrate that defendant does not understand the legal issues he faces.

The defendant demands extensive discovery into the boyfriend's and ex-wife's finances. He cries foul when I will not order the prosecution to provide documentation of the cash defendant claims to have given his wife.

The papers defendant has filed in this case fill three volumes and stack several inches high. They do not include a single indication of any support from defendant to his children.

Everytime his attorneys advise him that these are not legal, relevant or ethical avenues to pursue, he becomes angry because they will not do as he instructs. Everytime he receives an answer or ruling contrary to what he wants, he demands another attorney, a different judge or a new prosecutor.

He accepts no responsibility for his own conduct or obligations and blames all his legal difficulties on others. He claims court personnel "steal his papers"; the attorneys are "pathological liars"; the judge and prosecutor and defense counsel are "illegal bandits" who conspire against him. He charges that a court commissioner instructed his clerks to "discard" his files and then the appellate courts "looked a blind eye." (All quotes cited verbatim from defendant's writings.)

Further evidence of defendant's inability to rationally understand these proceedings is indicated in his conduct when he is given an answer he doesn't like or information contrary to his perception of reality. Rational behavior requires one to pursue this case through to trial and appeal, so that any legitimate concerns and defenses can appropriately be addressed in the court with correct jurisdiction.

Instead, the defendant remakes the same Motions repeatedly, demands rehearings, files inflammatory and slanderous professional complaints, and brings unfounded lawsuits in multiple courts that are without jurisdiction.

Further evidence of defendant's distorted perception of the judicial system is defendant's belief that his mere filing of a complaint means an attorney "is in the process of being disbarred"; a party "has been determined to be a pathological liar"; "one-hundred-million conflicts" actually exist; or an "appeal has been perfected." (All quotes cited from defendant's filings in this case.)

Any attempt to advise him otherwise is met with a professional complaint or lawsuit.

Defendant has no rational understanding of the punishment attached to a third degree felony criminal non-support conviction. The law provides for a prison sentence of 0-5 years. The more likely sentence is a suspended incarceration with an opportunity to pay the owed support.

This case has not yet been able to get to trial, let alone reach verdict, or any sentencing. Defendant's pretrial incarceration in this case is limited to (1) arrest on the initial warrant based on the probable cause statement with release to Pretrial Supervision; and (2) arrest on a $10,000 bench warrant to obtain him from Colorado in 2007. Defendant posted bail and was released at that time.

Yet in filings as recent as January 2009, defendant lists in his rights "now being violated"; "continually be put under the extreme hardship of being incarcerated and losing all that he has"; "being subjected to the Court crazy 9-11 practices and policies"; "having all

that he worked so hard to rebuild in Colorado totally lost"; "having the State of Utah repeatedly try to kill him."

The defendant has no rational understanding that any attached criminal penalty applies only to the person actually convicted. The defendant states to potential attorneys and to the Court that he is having difficulty finding an attorney "who is willing to do even part of the jail or prison time" if they lose.

That perception is so far removed from reality, that initially I assumed defendant was kidding. But the defendant repeats it so frequently and earnestly, that I can no longer disregard it. It is one more indication that defendant has no rational understanding of the potential punishments of the charged offense.

The second portion of a competency determination outlined in § 77-15-2, Utah Code Ann., allows the Court to consider defendant's ability to consult with counsel and participate in his defense with a reasonable degree of rational understanding. Evidence of defendant's inability in this area is even more voluminous than in the first portion.

On February 23, 2009, the last hearing here, defendant's most recent appointed conflict counsel, Sue Denhardt, moved to withdraw. As with prior defense counsel, defendant had filed professional complaints and lawsuits against her.

In addressing the Motion, I reminded defendant of my earlier ruling that I would not appoint any more attorneys for him. I advised him that

he had the right to effective representation, but that he did not have any right to personally and professionally attack every attorney who enters an appearance in this case. The defendant was outraged and objected loudly, asserting, "She is the only one!"

Given the factual case history docketed here, defendant's statement was totally detached from reality. In defendant's March 6, 2009, Petition for an En Banc Rehearing, defendant modified his statement to be: "She is the only court-appointed counsel he could not get along with." Even so modified, the following detailed review of the court docket shows defendant's perception has no basis in fact.

On February 20, 2001, at the first appearance hearing upon a filing of this felony, Judge Reese appointed the Legal Defenders Office to represent defendant who was still in Colorado. Clayton Simms was assigned.

Fewer than five months later, on July 6, 2001, LDA asked to substitute counsel, given problems defendant was having with his attorney, and John O'Connell, Jr., was assigned.

Forty-two days later, on August 17, 2001, defendant filed a *pro se* Motion alleging incompetency of his attorneys.

On September 10, 2001, John Hill, the LDA Director, assigned Karen Stam to address defendant's complaints.

Finally on October 15, 2001, Robin Ljundberg acknowledged that defendant's allegations of incompetence and malpractice are so extreme

that the Legal Defenders Office can no longer represent him, and asked that the entire office be conflicted off the case.

In a period of eight months, defendant went through four very fine defense attorneys, each with a reputation for being able to work with even exceptionally difficult clients.

On November 7, 2001, Edwin Wall was appointed as conflict counsel. All of these appointments preceded defendant's incarceration in Colorado. On April 1, 2003, Mr. Wall withdrew. Once defendant returned to Utah, and I denied his 180-day Detainer Motion to Dismiss, the case got back on track towards trial. Ed Wall was reassigned as conflict counsel on November 5, 2007. He stated he would try again to work with defendant, but moved to withdraw six weeks later, advising the Court he was unable to do what the defendant insisted of him.

On January 14, 2008, I allowed Mr. Wall to withdraw and granted defendant's request for time to hire his own attorney. Defendant was admonished this would delay trial.

Meanwhile, defendant filed several *pro se* Motions, requested more time and stated he was having difficulty hiring an attorney who would agree to his requests.

On March 10, 2008, Barton Warren appeared with defendant. On April 7, 2008, Warren asked leave to withdraw, because he cannot rationally deal with defendant, or help him understand his demands are irrelevant and unethical. I granted Warren's Motion to Withdraw and appointed LDA

again. I advised defendant that a conflict appointment was likely, but that this was the appropriate procedure to follow.

On April 16, 2008, Patrick Anderson, LDA, entered an appearance. On May 2, 2008, the expected conflict counsel Motion assigned Monte Sleight. Both attorneys appeared. However, defendant had retained Delbert Welker, who appeared with him. I excused both Mr. Anderson and Mr. Sleight.

On May 20, 2008, defendant was present with Mr. Welker. I ruled on Mr. White's Motions and ordered that the Court would no longer consider any *pro se* Motions when defendant had an attorney of record. The Motions were so numerous, substantively non-sensible, and procedurally incorrect that I was unable to manage them and still move the case forward. I ordered that the Attorney General was not required to respond to *pro se* Motions.

Defendant fully disregarded my Order to proceed through his attorney. In July 2008, Welker moved to withdraw. On July 21, 2008, Mr. Welker addressed in detail, on the record, the time and resources he had expended on the case. He stated defendant's requests were neither rational or relevant, and he could no longer represent him.

I allowed Mr. Welker to withdraw, reappointed counsel, left all trial and pretrial dates intact, and instructed defendant that this would be the last attorney appointed for him. He needed to rationally work with this attorney, or I would find he had effectively waived counsel.

Heidi Buchi appeared from LDA with the immediate reassignment to current conflict counsel, Susan Denhardt.

To my knowledge, defendant has filed complaints and lawsuits against attorneys Warren, Welker and Denhardt; as well as the trial judge and prosecutor.

In light of all the above, Mr. White's sworn statement that Ms. Denhardt is the only attorney he has problems with is clear evidence that he is significantly detached from reality.

Defendant also indicated to Dr. Rindflesh that there is an attorney he can work with and Dr. Rindflesh feels this suggests the defendant can be dealt with and represented adequately. The attorney was not named in the report and Dr. Rindflesh acknowledges that he was not able to communicate with the attorney to get his perspective on the matter.

That attorney was identified at this hearing as Mr. David Brown. Mr. Brown has stated on the record that he cannot legally take this case, because he has represented the defendant's wife in related proceedings. This is one more indicator that defendant does not have a reasonable understanding of the legal and factual conflicts involved here.

This case history depicts more than a tactless, stubborn client. The evidence is abundant that the defendant is so narcissistic that he is unable to disclose to counsel any pertinent, relevant information that would assist in this defense; or engage in any reasoned choice of legal strategies and options.

The defendant has no understanding of the adversary or advocacy nature of these proceedings. He perceives defense attorneys, prosecutors and judges as in a single conspiracy against him.

The defendant has no understanding of the procedural rules that control this case at the pretrial, trial or appellate levels. When the Court or counsel attempt to direct him, he responds with vicious personal and professional attacks.

Every single Motion, Complaint, lawsuit or appeal defendant has filed regarding this case has been DENIED or DISMISSED as substantively without merit or procedurally incorrect.

The defendant is beyond litigious or obstreperous. The evidence outlined in this ruling far exceeds the standard of preponderance.

Defendant is absolutely incompetent to proceed to trial on the criminal non-support charge, dated 1994-2000.

Upon an adjudication that a defendant is not competent to proceed, § 77-15-6, Utah Code Ann., directs the procedure to restore competency. It addresses cases where medication and treatment at the State Hospital are likely to be beneficial.

It specifically states that defendants charged with Aggravated Murder, Murder, Attempted Murder, Manslaughter and other first degree felonies should have priority to these resources.

Certainly the State has a real interest in prosecuting criminal non-support cases. But as a third degree felony property charge, it carries less weight.

There is no indication in this case that defendant would cooperate with treatment outside the State Hospital, that treatment would be beneficial, or that restoration to competency is likely. There is no reason to think any restoration could occur in a reasonable period of time.

The controlling statute is clear that defendant's non-compliance is not a basis for dismissal. But my responsibility as Judge requires I weigh all applicable factors.

The allegations in this case are nine to fifteen years old. The evidence is sufficiently stale that neither party is likely to get a fair trial. The minor children are approaching majority. There is no likelihood that restitution ever would be paid, even if defendant were tried and convicted.

There simply are not sufficient interests to justify expending any more resources on this case or allowing it to proceed any further.

Based on my adjudication that defendant is not competent to proceed further, nor likely to become so in the reasonable future, the allegations of criminal non-support against James B. White from 1994-2000 in the State of Utah, are hereby DISMISSED WITH PREJUDICE. Section 77-18a-1 provides that a defendant may appeal from an Order adjudicating

defendant's competency to proceed further in a pending prosecution. My dismissal with prejudice may moot that.

This adjudication is limited to the judicial determination provided in § 77-15, Utah Code Ann. Any collateral, substantive right that may be affected by this adjudication is no more substantial than the limitations already placed on defendant by virtue of his current status as a convicted felon.

Dated this 24th day of March, 2009.

ANN BOYDEN
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling, to the following, this 24 day of March, 2009:

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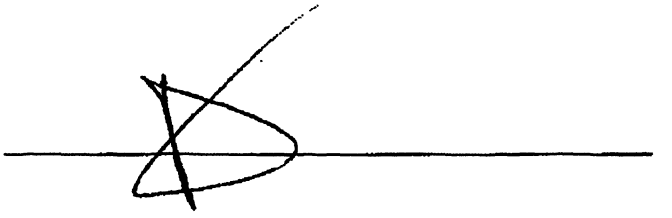

ADDENDUM C

"Ruling on State's Motion to Amend Judgment," dated April 14, 2009

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	RULING ON STATE'S MOTION TO AMEND JUDGMENT
Plaintiff,	:	
		CASE NO. 011900818
vs.	:	
JAMES BENJAMIN WHITE,	:	Judge Ann Boyden
Defendant.	:	

The Court has reviewed the State's Motion to Amend Judgment, filed April 2, 2009. Because the Court's adjudication of defendant's competency to proceed on the 1994-2000 criminal non-support allegations is so narrowly tailored, the State's arguments are not persuasive.

The State argues I erred in not delaying the March 23, 2009 competency hearing until Dr. Stephen Golding could review out-of-state mental health records regarding the defendant. The State incorrectly claims the record is unclear whether defendant cooperated in that evaluation.

The record is abundantly clear that defendant refused to timely comply with my December and January Orders to cooperate in the evaluation process, including refusal to participate in an evaluation with examiner Golding. Therefore, Dr. Golding attempted to comply with the Court-ordered evaluation by obtaining mental health information from sources independent of the defendant. Dr. Golding was able to review many of the

same documents the Court had considered. I determined that five to seven year old records from another state on another case would not provide meaningful assistance in my adjudication of defendant's present capabilities. Since I had extensive information on the issues otherwise, I determined not to allow defendant's failure to comply to even indirectly delay the proceedings any further.

The State argues that upon my adjudication that defendant was not competent to proceed, I ignored the Utah Code Ann., § 77-15-6, requirement to commit the defendant to the custody of the executive director of the Department of Human Resources for treatment intended to restore his competency. The State feels that because I did not have the benefit of these additional evaluations, my ruling was premature and without sufficient basis.

Neither is correct. As outlined in detail in both my oral and written decisions from the March 23, 2009 hearing, this Court considered years of observations and volumes of evidence before reaching the competency adjudication The State does not contest that determination.

Upon that adjudication, I did not blindly or routinely proceed to the initial next-step of committing defendant to the Department of Human Resources, without any more consideration. Instead, I exercised my proper judicial role and considered the entire restorative process described in § 77-15-6 I weighed the judicious expenditure of those extensive resources against the totality of the circumstances in the

pending case. Those circumstances include the factor that the allegations in this case are 15 years old, with the attendant evidentiary issues.

If I had made the commitment requested by the State, the evidence is abundant that the defendant would not have complied with my order to cooperate with the director of Human Resources any more than he has complied with any of my previous orders.

Defendant's previous conduct and statements indicate the most compulsive services; including police power, incarceration, State Hospital commitment and involuntary medication, would likely be required to obtain defendant's cooperation in an attempt to restore competency. Even, if for the sake of argument, defendant were to freely cooperate and be fully restored to competency within the initial six-month treatment phase; I had already ruled that the reasonable time frame for this old case to be fairly tried, is already past. The State does not indicate who would bear the cost of the full process they demand. But it is proper for the Court to determine the appropriateness of this use of resources.

I rendered the Judgment the State seeks to amend only AFTER weighing all the factors clearly outlined in my ruling. I considered them along with defendant's extensive history of noncompliance and the evidentiary issues raised by the age of the case. ONLY THEN did I determine that the likelihood of the State obtaining the remedy they seek on the pending

allegations did not warrant the expenditure of all the resources outlined in § 77-15-6. Therefore I dismissed the pending allegations ONLY.

The State rightly insists that both the State and victims have a genuine interest in pursuing criminal non-support charges I acknowledged that real interest in the March 23rd hearing, and do so again here But my ruling explicitly applies to defendant's competency to proceed on the 1994-2000 support only. It does not preclude the State from screening and appropriately pursuing more recent charges.

The law is clear that a competency adjudication applies only to the present capabilities of defendant to proceed on pending charges. It specifically does NOT bestow a permanent status.

In fact, my ruling affords the State an opportunity to pursue more recent charges, if appropriate, with fresher evidence, more accessible records, more readily available witnesses, and negates the possibility of reversal on defendant's 180-day Detainer Motion from 2001.

The State also argues that my ruling denies them any medical finding necessary to support possible social security benefits the victims might receive.

Again, I explicitly ruled that this is a judicial determination. It is NOT a clinical diagnosis, and is NOT to be used for purposes outside those outlined in § 77-15. Such issues were not before me, and are never properly before the trial judge, in a criminal case, making a competency determination. If the State seeks that type of medical

finding, it must seek it in a straightforward, proper process, and not use competency proceedings for a non-proper purpose.

My March 23, 2009 adjudication regarding defendant James Benjamin White's present competency to proceed on the charge in the then-pending Information was carefully and purposefully tailored to address the specific issues before me. I had abundant evidence to reach my conclusions, and the ruling specifically sets the scope and parameters of the Judgment.

Motion to Alter or Amend the Judgment is DENIED.

Dated this 14 day of April, 2009.

ANN BOYDEN
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling on State's Motion to Amend Judgment, to the following, this 1 day of April, 2009:

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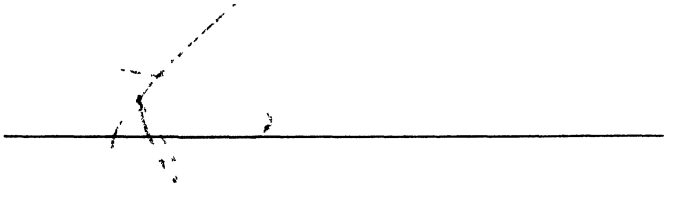

ADDENDUM D

James White's Pro Se Brief

Case No. 20090279-CA

IN THE

UTAH COURT OF APPEALS

State of Utah
Appellant/Cross-Appellee,

vs.

James Benjamin White,
Appellee/Cross Appellant.

JAMES B WHITE *PRO SE* DIRECT CRIMINAL APPEAL OPENING BRIEF

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Counsel for Appellant/Cross-Appellee

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STATE STATUTES

SUMMARY OF ARGUMENT

I. **The trial court did not have authority to depart from the requirements of the competency statute and obtain only one competency evaluation, nor to depart and go directly against the state's evaluation**

II. Mr. White should not be Committed to the State Department of Mental Health because the Trial court's Competency Proceedings ware not conducted in accordance to any Statutory **or Constitutional Provisions.**

II

III

IV

V

STATEMENT OF JURISDICTION

James B. White file his own *pro se* Direct Criminal Appeals of the Trial court's order dismissing one count of Criminal Non-support §77 - — --, after conducting invalid competency Proceeding proceedings. This Court has jurisdiction under Utah Code Annotated §78- ___ A-___4-___103 (__) (e) (West 2008) **SEE ADDENDA "A" (COPY OF JUDGE BOYDENS' ORDERS OF DISMISSAL**

I MR. WHITE SHOULD NOT BE COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES, BECAUSE THE TRIAL COURT'S COMPETENCY PROCEEDINGS WERE NOT CONDUCTED IN ACCORDANCE WITH STATUTORY PROVISIONS OR MR WHITE'S GUARANTEED STATE AND FEDERAL CONSTITUTIONAL DUE PROCESS RIGHTS

The Trail Court, and Judge Boyden were required as per the plain language of Utah's Annotated Code §77-15-5 (2)(b) to obtain at least two Mental Health evaluations, which provides: "(b) The defendant ***shall*** be examined by at least two mental health experts not involved in the current treatment of the defendant. . ."

In *State v. Anderson*, 136 P.3d 778, 783 (Utah App. 2007) this Appellate court has held that when interpreting a statute, the appellate court looks first to its plain language to determine its meaning. Only when it finds that a statute is ambiguous does it look to other interpretive tools. While examining a Statute's plain language, the appellate court does so under the presumption that the legislature used each term advisedly. It is an elementary rule of construction that affect must be given, if possible, to every word, clause and sentence of a statute. No clause, sentence or word shall be construed as superfluous, void or insignificant in the construction can be found which will give force to and preserve all the words of the Statute.

The appellate court's task is to interpret the words used by the legislature, not to correct or revise then. When the words are clear, however incongruous they may appear in policy application, the appellate court will interpret them as written,

leaving to the legislature the task of making corrections when warranted.

Judge Boyden was not allowed to very from the Plain Language of the Statute because it included the working ***SHALL,*** and was specifically designed to make sure that at least two Psychological evaluations would be done and that they had to be done by two separate psychologists who were not involved with the Defendant, and from who's evaluations the Judge and all involved would have to rely upon.

The State's Statutory provisions were specifically designed to protect the Public from Judges like Boyden who would not follow the trained licenced psychologists evaluation report, and pretend to understand psychology better as was Mr. White's case by issue their own unorthodox opinions instead.

Instead of following Utah's mandated Statutory Code, Trial Judge Boyden illegally voided the Statutory Procedure for no apparent reason other then she already had the State's Commentary Evaluation report provided to her and she knew that it was most likely that the other mandated report would most likely be in Mr. White favor because it would also have to be provided for by his defense wherein it would be even more clear that Mr. White was in fact Competent to Stand Trial; and for which would go against Judge Boyden's prejudice and Biased plans to have Mr. White Determined to be incompetent.

The idea of course was that if Mr. White could legally be held to be found incompetent then of course Judge Boyden herself would not look so bad to the Judicial Conduct Commission where Mr. White also had a case (See **No.09-3D-049)** pending under investigation from Mr. White allegations that Judge Boyden had illegal instructed her own court clerk to remove from the District Court, Official court filed document, of Mr. White's Speedy Trial Motions to Dismiss on violation of Speedy Trial right. **SEE APPENDIX "___" (COPY OF MR. WHITE'S JUDICIAL COMPLAINT AGAINST JUDGE BOYDEN)**

Mr. White is requesting that this Appellate Court remand this case back to the District Court, other then prejudiced Judge Boyden, to conduct proceedings that are consistent with Utah Annotated Code Provision, because worse then the fact that Judge Boyden did not seek to have the second evaluation done was the fact that she did not follow the State's Own Evaluation recommendations issued by Dr. Reindflesh's, because in his evaluation he clearly provided that Mr. White was

totally competent. **SEE APPENDIX "___" (COPY OF DR RINDFLESH'S COMPETENCY EVALUATION)**

In Judge Boyden's Final order (that was prepared under extreme prejudiceness because she had been both sued in State and Federal Court for her illegal actions of removing Mr. White's own *pro se* motions to dismiss on Violations of his Speedy Trial Rights) she propagated the false belief that Mr. White did not have the ability to fully and legally comprehend the legal system and penalties to be imposed, when in fact he is totally competent, as per the State's own evaluation.

Further this Appellate court must completely over turn Judge Boyden's unorthodox ruling because it is not in line with any other Statutory or Constitutional ruling that have ever been issues in any District State or Federal court, nor doe it agree in any way with that of the State's own Psychologist Evaluation, which also provides that Mr. White is in fact totally Competent.

Mr. White dose in fact clearly understand the legal system and how they can promise you one thing in a Plea Agreement but never in fact be required to uphold their own promise, because in 1996 in the State of Colorado Mr. White was forced under coercion and duress (of again being Jailed after he had already posted a $5,000. bond) into taking a four year Deferred Sentence, only to do the 4 year Sentence in the State of Utah, without being found in violation of that sentence; to again then be sent to the Colorado Prison for an Additional Four years for no crime committed.

Then in addition to not agreeing to a Sentence that would include being subjected to a life time sentence to register every few month, he now also has to pay an additional $100.00 a Year in Fees totaling more then $5,000.00

Further Judge Boyden's ruling providing that Mr. White was incompetent could not be further from the truth because Mr. White clearly understands the American Judicial System because he has personally taken four of his own Cases through both the State of Colorado Appellate Courts and Federal District and Appellate court and then through the United States Supreme court, which included filing thousands of court legal pleadings, as well as he helped other prisoners file numerous appeals.

While in the Colorado Department of Corrections Prison system Mr. White probably studied more law for four years and filed more petitions them most Attorneys will ever file, and he studied hard enough to know that Judge Boyden did not have any Jurisdiction to bring the case to trial in direct violation of this Rights to a Speedy Trial, being more then Eight Years later, when he was available at all time for the State to Extradite him back to the State of Utah years ago.

II. THE JUDGE BOYDEN, SUZAN DENHARDT AND THE DISTRICT ATTORNEY ANN ROZYCKI HELD THE COMPETENCY HEARING ILLEGALLY AS PER STATE STATUTE.

Mr. White's Statutory and Constitutional rights of how the competency evaluations were even ordered were also violated because Utah Annotated Code §77-15-5 Provides that "(1) when a petition is filed pursuant to 77-15-3 raising the issues of the defendant's competency to stand trail or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. . ." were violated because as per the District court record it was Mr. White's Prejudiced Non-Defense Attorney Suzan Denhardt who called the court and requested the December 8, 2008 Hearing and not on the Court's own motion nor had Suzan Denhardt submitted the required petition herself to the court as was required by the Statutory Competency Provisions. **SEE APPENDIX "___" (COPY OF THE DISTRICT DOCKETING HISTORY "SUSAN DENHARDT CALL CLERK'S OFFICE REQUEST HEARING" –)**

Further since Mr. White's Prejudiced Non-Defense attorney Suzan denhardt had not requested the Competency proceedings in a Petition as Pursuant §77-15-3 but rather had just called the court house and Scheduled the Hearing (without giving Mr. White any legal notice of the Hearing dates) and where it was never provided in the Official Court record that the Judge had also not called for the Competency Hearing on her own as was required pursuant to section §77-15-4 then Said December 8, 2008 Competency proceedings were not as pursuant to any of the State of Utah Law Code Provision and therefore were also not valid.

Worse then all of that was the fast the since the proceedings was in fact Competency Proceeding, then for Mr. White to not even be defended by any Attorney Counsel was completely incorrect, because the very point of having the competency proceeding were to protect the Mentally impaired for being prosecuted by the Court

when they were not even able to comprehend the legal system as Judge Boyden had illegally declared Mr. White to be.

What Mr. White means by the fact that he did not have any valid counsel was the fact that his counsel had told the judge that she could not legally represent Mr. White in any further proceedings, because she had stood before Mr. White's small claims District Judge and sworn an oath to tell the truth and therein testified against Mr. White in open court and therein became a direct conflict of interest between her and Mr. White, and as per his Attorney privileges she could not legally defend his case any longer, and that is why in the January 24, 2008 Hearing she had put in her official motion to withdraw, as Mr. White's counsel and was granted leave by the Judge.

By Judge Boyden's own Ruling of Mr. White's Competency Determinations she also completely ruled against herself because by refusing to appoint Mr. White's Case any Conflict Fee Competent Attorney counsel (and where Mr White was also not allowed to provide any form of defense himself) then the proceeding were again completely un-orthodox, illegal and unconstitutional and as such were also invalid.

III. THE PROSECUTION IS NOT ENTITLES TO FILE AN APPEAL WHEN BY LAW THEY ARE ABLE TO RE- FILED CRIMINAL NON-SUPPORT CHARGES TO INCLUDE A MORE CURRENT PERIOD

The State is not entitled to file a direct appeal because in the state of Utah the charges of criminal non support are a continuing offense, in that as with Mr. White's case once he is owing more then $10,000.the state is able to Re-filed the same charges of Criminal Non-support to include a more recent time period.

{Citing the Utah's Criminal Non-Support Statute}

In Mr. White's Appeal Memorandum in Support of his appeal he has already cited a Habeas Corpus Petition case in which the Utah State Supreme court held that if the State's prosecution is able to Re-file the charges (as is the case in Mr. White's) then they were not legally allowed to file their direct appeals.
SEE MR WHITE'S APPEAL MEMORANDUM IN CITED CASE

IV. (4) THE DECEMBER 8, 2008 COMPETENCY HEARING WAS ALSO ILLEGALLY BECAUSE JUDGE BOYDEN, DISTRICT ATTORNEY ANN ROZYCKI AND DEFENSE COUNSEL OF SUZAN DENHARDT ALL HAD

A 100 MILLION DOLLAR PREJUDICENESS, AND THEREFORE HE ALSO NOT REPRESENTED BY ANY COUNSEL OR PRESENT TO OTHERWISE DEFEND HIMSELF

On December 8, 2008, the trial court stayed the proceedings and ordered a competency evaluation. R. 663; which was clearly not valid because it was not done as per Mr. White's Statuary and Constitutional Rights of Due process because it was both not done in a court of Competent Jurisdiction, being that it was not held in any court Room, nor was any official record taken, nor was Mr. White present to defend himself, and where his Non-Defense counsel of Suzan Denhardt was already legally prejudiced (being that Mr. White was suing Suzan in the State Federal District Court for 100 million dollars) then Mr. White was not provided with any valid defenses during the Competency Proceedings, and as such the Competency Proceedings were illegally conducted and invalid as per Mr. White's Guaranteed Defense Due Process Rights. **SEE APPENDIX"___" (COPY OF FEDERAL COMPLAINT WITH SUZAN DENHARDT)**

Trial Judge Boyden, and the District Attorney, were also baised and prejudiced during the Competency Proceedings and should not have been allowed to remain on the case because Mr. White had also sued them in Federal Court for 100 million dollars for prior damages caused to him when Judge Boyden illegally had her court clerk remove Mr. White's Speedy Trial motion from the court's own official file. **SEE APPENDIX "___" (ORIGINAL FEDERAL COMPLAINT)**

V (5) JUDGE BOYDEN, ANN ROZYCKI, AND SUZAN DENHARDT VOIDED MR. WHITE'S DUE PROCESS RIGHTS WHEN THEY FAILED TO PROVIDE MR WHITE WITH A COPY OF THE STATE'S COMPETENCY EVALUATION OR ALLOW MR. WHITE TIME TO READ THE EVALUATION PRIOR TO THE HEARING..

Suzan Denhardt Mr. White's Prejudice Non-Defense attorney, the Judge and the District Attorney all voided Mr. White's Due Process rights to Court Access when they also failed to provide Mr. White with a copy of the State's Competency Evaluation (that clearly provided that Mr. White was totally competent to proceed to trial) before the Commentary hearing, nor would Judge Boyden even allow Mr.

White Just a few minutes to read the Report, so that he could otherwise Defend himself when no Other unprejudiced defense was otherwise legally available. **SEE APPENDIX "___" (TRANSCRIPT OF COMPETENCY HEARING)**

VI (6) MR WHITE WAS NOT PROVIDED WITH COMPETENT UNPREJUDICED COUNSEL WHILE AT THE COMPETENCY HEARING, AND THEREFORE VOIDED ALL DUE PROCESS RIGHT.

The Competency hearing(s) were illegally because Mr. White was not represented by any unprejudiced Counsel, where Mr. White had a United States Federal District Court law suit pending against Suzan Denhardt in the amount of $100 million Dollars, for otherwise failing to defend his valid Speedy Trial Rights. **SEE APPENDIX "___" (COPY OF MR. WHITE'S FEDERAL DISTRICT PETITION WHICH ADDED SUZAN DENHARDT TO THE SUIT)**

On _____2008 Mr. White had also taken his Non-Defense Counsel of Suzan Denhardt through a Small Claims Court hearing and was in the active process of suing her for damages done in the amount of $2,000.00 because she was a pathological Liar and and had not given Mr. White any written of verbal notice of the December 8, 2008 hearing that was conducted off the record, and in chambers only. **SEE APPENDIX " ___" (COPY OF THE SMALL CLAIMS ORDER OF DISMISSAL)**

Further because the proceeding were in fact Competency Proceedings then as per Mr. White's Guaranteed State and Federal Due Process rights the Trial Judge Boyden was required to provide Mr. White with both Competent and unprejudiced Counsel and where Suzan Denhardt clearly had a 100 million Dollar Federal and $2,000.00 State Small Claims Conflict of Interest, and therein was legally prejudiced, then Mr. White was not represented at all by any valid counsel at the time of the Ruling and therefore it was also not legally valid as such.

VII (7) MR WHITE ALSO SHOULD NOT HAVE BEEN COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES HUMAN SERVICES, MENTAL HEALTH WHILE ON APPEAL BECAUSE HE HAD POSTED A $15,000.00 BOND THAT ALLOWED HIM TO REMAIN FREE PENDING APPELLATE STATE AND FEDERAL REVIEWS.

Mr. White should not have been committed to the Department of Human Service, where the only evaluation that was relied upon was one that was obtained through the State's Psychologist, and who's report clearly provided that Mr. White was totally Competent to stand trial, and where Mr. White had posted a $15,000. Bond that allowed him to remain free while the matter was fully decided in the District Court, and while on appeal through the State and Federal Appellate courts.

VII (8) JUDGE BOYDEN'S COMPETENCY RULING WAS ALSO INCORRECTLY PROVIDED WHERE MR. WHITE HAD ALREADY BEEN DETERMINED TO BE COMPETENT IN JUDGE WILLIAM BARRETT'S COURT DURING THE SAME TIME PERIOD

Mr. White was also determined to be Competent to stand trial in June of 2008 which was also during the same time period, and of another Utah District Court case that went before Honorable Judge William Barrette and that was properly dismissed on June 20, 2008, because it was also determined that it had violated Mr. White's Speedy Trial rights (being more then 7 years to trial), where non of the delays could be attributed to Mr. White's fault. **SEE APPENDIX "___" (COPY OF JUDGE BARRETT'S TRANSCRIPT OF HEARING)**

Judge Boyden should also have followed precedence of Judge William Barrette's competency and dismissal the case because in that case Judge Barrette had also relied on the fact that it was the State of Colorado that Had officially contacted the State of Utah Department of Corrections system, in a direct effort under the Interstate Agreement on Detainer Act (IAD) and the Mandatory Disposition of Detainer Act (MDA) to have the pending charges dealt with in a speedy manner; but for which as was with that case the State of Utah declined to prosecute, therein officially meeting the IAD and MDA requirements that the Charges be properly disposed of for State of Utah's failure to prosecute within the 120 days of the MDA and the 180 Days of the IAD Acts. **SEE APPENDIX ____ (COPY OF WILLIAM BARRETTE'S ORDER OF DISMISSAL)**

XI (9) MR WHITE WAS ALSO WORKING FOR THE DIRECTOR OF DAVIS COUNTY MENTAL HEALTH MARIAN WOMACK FOR SEVERAL MONTH, WHO ALSO PROVIDED FOR HIS COMPETENCY

Mr. White was also working for the State of Utah's Davis County Mental Health director Marian and Don Womack during the time in question for several month, who also wrote a favorable article for Mr. White on Angie's List.Com; which also provides for Mr. White's competency in two ways being that she was happy to employ Mr. White herself, and after several months of paying his wages, also wrote an A Report of Mr. White's Personal Handyman services, and posted it on Angie's List.com, for all to review. **SEE APPENDIXES "___, ___" (COPY OF CHECKS PAID TO MR WHITE AND ANGIESLIST REPORT)**

X (10) MR. WHITE WAS DENIED HIS SPEEDY TRIAL RIGHTS

Judge Boyden refused officially to enter a District Court Ruling on the merits of Mr. White's *prose* Motion to Dismiss on Violations of Mr. White's Speedy Trial Rights. **SEE APPENDIX "___" (COPY OF MR. WHITE SPEEDY TRAIL MOTION)**

In May 20, 2008 Judge Boyden violated Mr. White's rights to Due Process Court Access when she issued her order providing that Mr. White's Paid Attorney could not file any Official Motion to Dismiss on Violation of his Speedy Trail Rights. **SEE APPENDIX "___" (COPY OF JUDGE BOYDEN'S ORDER)**

Judge Boyden voided Mr. White's Speedy Trial Due Process Rights when on appeal in 2001 through 2004 she failed to appoint his case indigent attorney Counsel, while on appeal of his Speedy Trial Rights. **SEE APPENDIX "___" (COPY OF MR. WHITE'S SPEEDY TRIAL APPEALS** 2001-2004)

Judge Boyden voided Mr. White's Speedy Trial Rights to Petition for Writ of Habeas Corpus, when Mr. White had officially filed his State Petition for Writ of Habeas Corpus, also owing Mr. White $5,000.00 in penalty fees. **SEE APPENDIX "___" (COPY OF MR. WHITE'S STATE PETITION FOR WRIT OF HABEAS CORPUS)**

Judge Boyden voided Mr. White State and Federal Statutory Mandatory Speedy Disposition of detainer, where Mr. White had officially petitioned for a 120 day Speedy Trial back in 2001, when Mr. White was in the Salt Lake County Jail from June 20, 2001 through November 15, 2001; being more then 135 days of

incarceration without a Statutory Speedy Trial back in 2001. **SEE APPENDIX "___" (COPY OF MR. WHITE'S (STATE 120 SPEEDY DISPOSITION PETITION)**

Mr. White was denied his rights to a Seedy Trial Rights by:

(A) Having a trail on charge brought back in 2001, but held more then eight (16) years after the alleged crime(s) (1993-1996), and where non of the resulting delays could be ***Actually*** attributed to any of Mr. White's actions;

(B) In ***Barker Vs. Wingo***, and other similar Utah's Supreme court they have held that a delay in excess of two year triggers an automatic presumption of prejudiceness toward the State and for which calls for an automatic Hearing to determine who ***actually*** caused the resulting delay, which the trail Judge Boyden refused to do, as the State of Utah knew where Mr. White was at all times;

© Mr. White has physical proof that he had both requested that the case be heard in a Speedy Manner and that his case was prejudiced by the delay in that he was not able to provide any financial proof of his expenses to counter any income that he had received that he would have otherwise been able to legally write off as an expense, through a Certified Public Accountant;

(D) Mr. White had also requested that the State of Colorado contact the State of Utah through his formal Inter State Agreement on Detainer Act and his Mandatory Agreement on Detainer Act, which the State of Colorado had Official done through the State of Utah, and therefore the Charges had to legally be dismissed, because the State of Utah had then otherwise officially refused to bring Mr. White to trial as was required by the two States Correctional Systems;

(E) All of Mr. White's Due process rights were violated by not having a Speedy Trial where he was not able to provide any form of valid defenses on charges that stemmed from a period back from 1993 through 1996 being more then 16 years, where he had no witnesses to call and no evidence available from the Internal Revenue Services (being that they only go back for 10 years), and would be heard before an Impartial out dated Jury Trial, as well as all his other Guaranteed Due Process Rights would have been violated therein;

(F) Mr. White Criminal Non-Support case should have been dismissed as a matter of precedence because his other Case that was not as old had already been dismissed by Judge William Barrett, because, as was the same as this case none of the resulting delay to bring that case to trial also could be attributed to Mr. White;

(G) Mr. White's Prejudiced Attorney Suzan DEnhardt could not legally

represent Mr. White's defenses because she too (as was the case with Mr. White's other counsel) had failed to defend Mr. White's Speedy Trial right wherein Mr. White had added her to his Pending Federal District Court Case, which at that time was pending in the State of Utah Federal District Court.

XI (11) MR WHITE WAS DENIED HIS VALID STATE FILED PETITION FOR WRIT OF HABEAS CORPS, OF DENIED SPEEDY TRAIL

Mr. White was denied his State and Federal rights to Petition for Writ of Habeas Corpus and penalties that are assigned, when all involved continually refused to hear his valid State and Federal Petition for Writ of Habeas Corpus, properly providing that Mr. White was being illegally held in violation of his rights to a Speedy Trail. **SEE APPENDIX "___" (COPY OF MR WHITE'S STATE PETITION FOR WRIT OF HABEAS CORPUS)**

Utah State Law code 77-_____ Clearly provides for a penalty of $5,000. For each and all involved including the District Attorney, Defenses Attorneys and Judge when as was the case with Mr. White they fail to have a Prompt Habeas Corpus Hearing to determine whether or not Mr. White was being illegally detained, in direct violation of his Speedy Trial Rights. **SEE APPENDIX "___" (COPY OF MR. WHITE STATE PETITION FOR HABEAS CORPUS)**

Mr. White should have received an award amount of at least $5,000. From each of the parties involved for refusing to acknowledge his valid file Petition for Writ of Habeas Corpus, and is now again requesting to be paid the moneys now still owing to him. **SEE APPENDIX "__" (COPY OF MR WHITE'S CLAIM FOR DAMAGES)**

XII (12). MR WHITE WAS DENIED AN UNPREJUDICED AND UNBIASED TRAIL JUDGE AND DISTRICT ATTORNEY

In 2008 when the case was set for trial Mr. White was only appoint one state appointed Counsel of Suzan Denhardt who was ineffective because she failed to defend Mr. White's Speedy Trial Rights in any way and who then became prejudiced counsel when Mr. White added her to his active pending State of Utah Federal District Court Case back in 2008.

Then Mr. White had also sued Judge Boyden in State Court for failing to notify him of the December 8, 2008 hearing for the amount of $2,000.00 for damages then also done to Mr. White, wherein Suzan, Ann the D A, and Judge Boyden were also forced to defend herself in small claims court, as well as they had gone head to head in Small Claims Court ordered Medication, therein they all further became directly legally prejudiced, and could not be on Mr. White case. **SEE APPENDIX "___" (COPY OF SMALL CLAIMS PAPERWORK)**

Further because Mr. White had in fact forced all three of then (Suzan Denhardt, the Trial Judge Ann Boyden and the District Attorney Ann Rozycki) to go before the Utah's Small claims Trial Judge _____, (for failing to provide him with any notice of the December 8, 2008 said competency hearing, and was seeking Small Claims damages in the amount of $2,000.00) then there is also no way that any of the three could have legally held the competency Hearing after because they were all legally prejudiced by the fact that they had in fact gone head to head against Mr. White to answer for their actions done to Mr. White on Dec. 8 2008.

The District Attorney Ann Rozycki was further biased against Mr. White by the fact that she had also again gone head with Mr. White when he had questioned her directly while under oath in Mr. White's other Civil District Case Against his previous counsel of Warren J. Barton, wherein again also creating additional legal prejudiceness and biased toward Mr. White. **SEE APPENDIX "___" (COPY OF WARREN BARTON'S COURT CASE)**

Finally Because of these facts the competency proceedings that were in fact conducted were conducted under extreme prejudiceness and from all three parties and where the record clearly provides for the same of this prejudiceness, (because Mr. White was not allowed any time to ready the State's evaluation report), then the Hearing was conducted illegally and not of any valid form and must now also be over turned as such.

XIII (13) NO ONE SHALL BE JAILED FOR A DEBT OWING

John O'Connell Jr. Argued in his Memorandum in Support of his Motion to dismiss provided that the State of Utah's Provision for Criminal non support was not constitutional because it violated the State of Utah's Constitution that provided that " No One Shall be Jailed for a Debt Owing." **SEE APPENDIX "___" (MR.**

WHITE'S MOTION THAT HAD COPY JOHN O'CONNELL'S MEMORANDUM IN)

Mr. White also reargued these points through John O'Connell Jr's Brief, and for which the Trial Judge Boyden also made her Official ruling in the May 20, 2008 Hearing that the Criminal Non-support provision was in fact constitutional, and for which Mr. White also files this appeal.

SEE APPENDIX "___" (COPY OF JUDGE BOYDEN ____ ORDER)

XIV (14) UTAH'S CRIMINAL NON-SUPPORT STATUTORY PROVISIONS ARE ALSO UNCONSTITUTIONALLY VAGUE

In John O'Connell Jr's October 21, 2001 Memorandum in Support of his motion he argues that the state of Utah's Criminal Non- Support Statutes were unconstitutionally vague because, as was the case with Mr. White's case they failed to account as child support for any money and goods received from Mr. White like $45,000.00 in rental income, because they were too vague.

Mr. White had reargued this same points through John O'Connell's brief and for which he is now also appealing Judge Boyden's Official May 20, 2008 Other Ruling that the Criminal Non-Support Statute Vagueness was also in fact constitutional. **SEE APPENDIX "___" COPY OF MR. WHITE'S MOTION WITH COPY OF** JOHN O'CONNELL JR'S MEMORANDUM)

XV (15) JUDGE ANN BOYDEN HAD LOST ALL JURISDICTION OVER MR. WHITE'S CASE WHEN SHE REPEATEDLY REFUSED TO CONDUCT A SPEEDY TRAIL HEARING TO DETERMINE WHO *ACTUALLY* CAUSED THE EIGHT YEAR DELAYED TRIAL

Mr. White also believes that Judge Ann Boyden has lost all her Jurisdictions over Mr. White's case when she repeatedly refused to have a Speedy Trial Rights Hearing to determine who ***Actually*** caused the Resulting Eight Year delay to bring the case to trial, because she was conducting a Trial in direct violation of both Mr. White State and Federal Statutory and Constitutional rights as were upheld by both the United States Supreme Court and the State of Utah's Supreme Court, and therefore all proceedings including the Competency proceedings where then illegally conducted and invalid as such.

SEE STATE OF COLORADO CITING AND FEDERAL CITING

XVI. ALL OTHER ARGUMENTS RAISED THROUGH FOUR INTERLOCUTORY APPEALS AND THREE FEDERAL CASES AND TWO STATE CASES, NOT NOW LOCATED.

DATED THIS 12TH DAY OF MARCH 2010

_____

James B. White

CERTIFICATE OF MAILING

I hereby certify that on this 10th Day of October, 2009 that I deposited a copy of the forgoing *pro se* Opening Brief, in the United States Mailing System, Postage Prepaid and addressed to the Following:

_____

James White

Utah Attorney General's Office

Appellate Attorney Ron FuJino

Dear Court Clerk's Office:

Please file this *pro se* **OPENING BRIEF,** which is timely filed as per Joan Watt's 30 day request for an extension, and for me which I believe I am entitled to file because of the following reasons:

MR WHITE'S PRESERVES HIS APPELLATE STATUTORY AND

CONSTITUTIONAL GUARANTEED DUE PROCESS RIGHTS THROUGH FILING HIS OWN *PRO SE OPENING BRIEF*

Mr. White files his own opening brief and believes that he is proper in doing so *pro se,* because even though his case has been appointed appellate counsel of Ron FuJino, he now believes after talking to him that he will not be able to adequately defend his Direct Appellate herein case because he does not have access to all of Mr. White complete Files.

Mr. White's current Direct Criminal Appellate case stems from a time period from 1993 through 2009, and deals with several cases from both of the States of Utah and Colorado, including cases from both State's District and Federal courts with thousands of pages of documentation, including Utah's Small Claims Court.

Mr. White also believes that his *pro se* Opening Brief is properly before this court because Mr. White's herein Appellate case is also a direct Criminal Appeal, and in order for him to proceed on appeal through the Federal District and Federal Appellate and Supreme courts, all valid grounds for appeal that have also already been ruled on by the Trial court must now also be preserved by being Properly and adequately presented to both of the State court of Appeals and Supreme Court.

Finally Mr. White's will most likely not have appointed counsel through the Federal District-Appellate and Supreme courts and as such Mr. White will again have to defend them himself ***pro se*** as he did before back in July of 2006 when he proceeded to the United State Supreme Court (Case Number **06-5470)** and as such he is now also making sure that as required by State and Federal Laws he has properly preserved his Valid State appellate ground as now Petitioned ***pro se.***

Sincerely

_____

James B White ***Pro Se Appellant***